

CENTER FOR DISABILITY ACCESS  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**Scott Johnson**

Plaintiff,

v.

**NVP Associates**, a General  
Partnership;  
**Tocotea Incorporated**, a California  
Corporation

Defendants.

**Case No.**

**Complaint For Damages And  
Injunctive Relief For Violations  
Of: Americans With Disabilities  
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of NVP Associates, a General Partnership;  
Tocotea Incorporated, a California Corporation; and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

2. Defendant NVP Associates owned the real property located at or about

1 1694 Berryessa Rd., San Jose, California, in October 2021 and November  
2 2021.

3 3. Defendant NVP Associates owns the real property located at or about  
4 1694 Berryessa Rd., San Jose, California, currently.

5 4. Defendant Tocotea Incorporated owned Tocotea located at or about  
6 1694 Berryessa Rd., San Jose, California, in October 2021 and November  
7 2021.

8 5. Defendant Tocotea Incorporated owns Tocotea located at or about  
9 1694 Berryessa Rd., San Jose, California, currently.

10 6. Plaintiff does not know the true names of Defendants, their business  
11 capacities, their ownership connection to the property and business, or their  
12 relative responsibilities in causing the access violations herein complained of,  
13 and alleges a joint venture and common enterprise by all such Defendants.  
14 Plaintiff is informed and believes that each of the Defendants herein is  
15 responsible in some capacity for the events herein alleged, or is a necessary  
16 party for obtaining appropriate relief. Plaintiff will seek leave to amend when  
17 the true names, capacities, connections, and responsibilities of the Defendants  
18 are ascertained.

19  
20 **JURISDICTION & VENUE:**

21 7. The Court has subject matter jurisdiction over the action pursuant to 28  
22 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
23 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

24 8. Pursuant to supplemental jurisdiction, an attendant and related cause  
25 of action, arising from the same nucleus of operative facts and arising out of  
26 the same transactions, is also brought under California's Unruh Civil Rights  
27 Act, which act expressly incorporates the Americans with Disabilities Act.

28 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is

1 founded on the fact that the real property which is the subject of this action is  
2 located in this district and that Plaintiff's cause of action arose in this district.

3  
4 **FACTUAL ALLEGATIONS:**

5 10. Plaintiff went to Tocotea in October 2021 and November 2021 with the  
6 intention to avail himself of its goods or services motivated in part to  
7 determine if the defendants comply with the disability access laws.

8 11. Tocotea is a facility open to the public, a place of public accommodation,  
9 and a business establishment.

10 12. Unfortunately, on the dates of the plaintiff's visits, the defendants failed  
11 to provide wheelchair accessible sales and service counters in conformance  
12 with the ADA Standards as it relates to wheelchair users like the plaintiff.

13 13. Tocotea provides sales and service counters to its customers but fails to  
14 provide wheelchair accessible sales and service counters.

15 14. One problem that plaintiff encountered was that the sales and service  
16 counters were too high. There was no counter that was 36 inches or less in  
17 height that plaintiff could use for his transactions.

18 15. Plaintiff believes that there are other features of the sales and service  
19 counters that likely fail to comply with the ADA Standards and seeks to have  
20 fully compliant sales and service counters for wheelchair users.

21 16. On information and belief, the defendants currently fail to provide  
22 wheelchair accessible sales and service counters.

23 17. Additionally, on the dates of the plaintiff's visits, the defendants failed  
24 to provide wheelchair accessible inside table surfaces in conformance with the  
25 ADA Standards as it relates to wheelchair users like the plaintiff.

26 18. Tocotea provides table surfaces to its customers but fails to provide  
27 wheelchair accessible inside table surfaces.

28 19. A problem that plaintiff encountered was the lack of sufficient knee or

1 toe clearance under the inside table surfaces for wheelchair users.  
2 Additionally, the table surfaces were too low.

3 20. Plaintiff believes that there are other features of the table surfaces that  
4 likely fail to comply with the ADA Standards and seeks to have fully compliant  
5 table surfaces for wheelchair users.

6 21. On information and belief, the defendants currently fail to provide  
7 wheelchair accessible table surfaces.

8 22. Moreover, on the dates of the plaintiff's visits, the defendants failed to  
9 provide accessible entrance door hardware in conformance with the ADA  
10 Standards as it relates to users like the plaintiff.

11 23. Tocotea provides door hardware to its customers but fails to provide  
12 accessible entrance door hardware.

13 24. The problem that plaintiff encountered was that the entrance door  
14 hardware had a panel style handle that required tight grasping to operate.

15 25. Plaintiff believes that there are other features of the door hardware that  
16 likely fail to comply with the ADA Standards and seeks to have fully compliant  
17 door hardware.

18 26. On information and belief, the defendants currently fail to provide  
19 accessible door hardware.

20 27. The failure to provide accessible facilities created difficulty and  
21 discomfort for the Plaintiff.

22 28. These barriers relate to and impact the plaintiff's disability. Plaintiff  
23 personally encountered these barriers.

24 29. As a wheelchair user, the plaintiff benefits from and is entitled to use  
25 wheelchair accessible facilities. By failing to provide accessible facilities, the  
26 defendants denied the plaintiff full and equal access.

27 30. The defendants have failed to maintain in working and useable  
28 conditions those features required to provide ready access to persons with

1 disabilities.

2 31. The barriers identified above are easily removed without much  
3 difficulty or expense. They are the types of barriers identified by the  
4 Department of Justice as presumably readily achievable to remove and, in fact,  
5 these barriers are readily achievable to remove. Moreover, there are numerous  
6 alternative accommodations that could be made to provide a greater level of  
7 access if complete removal were not achievable.

8 32. Plaintiff will return to Tocotea to avail himself of its goods or services  
9 and to determine compliance with the disability access laws once it is  
10 represented to him that Tocotea and its facilities are accessible. Plaintiff is  
11 currently deterred from doing so because of his knowledge of the existing  
12 barriers and his uncertainty about the existence of yet other barriers on the  
13 site. If the barriers are not removed, the plaintiff will face unlawful and  
14 discriminatory barriers again.

15 33. Given the obvious and blatant nature of the barriers and violations  
16 alleged herein, the plaintiff alleges, on information and belief, that there are  
17 other violations and barriers on the site that relate to his disability. Plaintiff will  
18 amend the complaint, to provide proper notice regarding the scope of this  
19 lawsuit, once he conducts a site inspection. However, please be on notice that  
20 the plaintiff seeks to have all barriers related to his disability remedied. See  
21 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff  
22 encounters one barrier at a site, he can sue to have all barriers that relate to his  
23 disability removed regardless of whether he personally encountered them).

24  
25 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**  
26 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all  
27 Defendants.) (42 U.S.C. section 12101, et seq.)

28 34. Plaintiff re-pleads and incorporates by reference, as if fully set forth

1 again herein, the allegations contained in all prior paragraphs of this  
2 complaint.

3 35. Under the ADA, it is an act of discrimination to fail to ensure that the  
4 privileges, advantages, accommodations, facilities, goods and services of any  
5 place of public accommodation is offered on a full and equal basis by anyone  
6 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.  
7 § 12182(a). Discrimination is defined, inter alia, as follows:

- 8 a. A failure to make reasonable modifications in policies, practices,  
9 or procedures, when such modifications are necessary to afford  
10 goods, services, facilities, privileges, advantages, or  
11 accommodations to individuals with disabilities, unless the  
12 accommodation would work a fundamental alteration of those  
13 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 14 b. A failure to remove architectural barriers where such removal is  
15 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
16 defined by reference to the ADA Standards.
- 17 c. A failure to make alterations in such a manner that, to the  
18 maximum extent feasible, the altered portions of the facility are  
19 readily accessible to and usable by individuals with disabilities,  
20 including individuals who use wheelchairs or to ensure that, to the  
21 maximum extent feasible, the path of travel to the altered area and  
22 the bathrooms, telephones, and drinking fountains serving the  
23 altered area, are readily accessible to and usable by individuals  
24 with disabilities. 42 U.S.C. § 12183(a)(2).

25 36. When a business provides sales and service counters, it must provide  
26 accessible sales and service counters.

27 37. Here, accessible sales and service counters have not been provided in  
28 conformance with the ADA Standards.

1 38. When a business provides dining surfaces, it must provide accessible  
2 dining surfaces.

3 39. Here, accessible dining surfaces have not been provided in  
4 conformance with the ADA Standards.

5 40. When a business provides door hardware, it must provide accessible  
6 door hardware.

7 41. Here, accessible door hardware has not been provided in conformance  
8 with the ADA Standards.

9 42. The Safe Harbor provisions of the 2010 Standards are not applicable  
10 here because the conditions challenged in this lawsuit do not comply with the  
11 1991 Standards.

12 43. A public accommodation must maintain in operable working condition  
13 those features of its facilities and equipment that are required to be readily  
14 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

15 44. Here, the failure to ensure that the accessible facilities were available  
16 and ready to be used by the plaintiff is a violation of the law.

17  
18 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**  
19 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
20 Code § 51-53.)

21 45. Plaintiff repleads and incorporates by reference, as if fully set forth  
22 again herein, the allegations contained in all prior paragraphs of this  
23 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,  
24 that persons with disabilities are entitled to full and equal accommodations,  
25 advantages, facilities, privileges, or services in all business establishment of  
26 every kind whatsoever within the jurisdiction of the State of California. Cal.  
27 Civ. Code §51(b).

28 46. The Unruh Act provides that a violation of the ADA is a violation of the

1 Unruh Act. Cal. Civ. Code, § 51(f).

2 47. Defendants' acts and omissions, as herein alleged, have violated the  
3 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's  
4 rights to full and equal use of the accommodations, advantages, facilities,  
5 privileges, or services offered.

6 48. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
7 discomfort or embarrassment for the plaintiff, the defendants are also each  
8 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-  
9 (c).)

10 49. Although the plaintiff encountered frustration and difficulty by facing  
11 discriminatory barriers, even manifesting itself with minor and fleeting  
12 physical symptoms, the plaintiff does not value this very modest physical  
13 personal injury greater than the amount of the statutory damages.

14  
15 **PRAYER:**

16 Wherefore, Plaintiff prays that this Court award damages and provide  
17 relief as follows:

18 1. For injunctive relief, compelling Defendants to comply with the  
19 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
20 plaintiff is not invoking section 55 of the California Civil Code and is not  
21 seeking injunctive relief under the Disabled Persons Act at all.

22 2. For equitable nominal damages for violation of the ADA. See  
23 *Uzuegbunam v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021)  
24 and any other equitable relief the Court sees fit to grant.

25 3. Damages under the Unruh Civil Rights Act, which provides for actual  
26 damages and a statutory minimum of \$4,000 for each offense.

27 4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant  
28 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.



1 Dated: January 19, 2022

CENTER FOR DISABILITY ACCESS

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3 By: 

4 Amanda Seabock, Esq.  
5 Attorney for plaintiff  
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